

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1292 of 1999

in

SPECIAL CIVIL APPLICATION No 7070 of 1999

For Approval and Signature:

Hon'ble ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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STATE OF GUJARAT

Versus

SUO MOTU

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Appearance:

1. LETTERS PATENT APPEAL No. 1292 of 1999  
MR SN SHELAT ADDL ADVOCATE GENERAL for Appellant  
SUO MOTU for Respondent No. 1
2. Special Civil Application No 7070 of 1999  
SUO MOTU for Appellant  
RULE SERVED for Respondent No. 1

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CORAM : ACTG.CHIEF JUSTICE MR. C.K.THAKKAR and  
MR.JUSTICE D.P.BUCH

Date of decision: 24/11/1999

ORAL JUDGEMENT

#. This appeal is filed against an order passed in Special Civil Application No : 7070 of 1999 by the learned Single Judge on 15th September, 1999.

#. It appears that a letter was addressed to a Single Judge of this Court on 5th September, 1999 which is a part of the main matter (Special Civil Application No : 7070 of 1999 ), wherein an appeal was made to the learned Single Judge that against several employees of different categories, the State Government was contemplating launching of prosecution. It was stated that it would not be proper to take criminal actions . A prayer was, therefore, made to stay criminal cases.

#. The above letter was taken note of by the learned Single Judge. He entertained the said letter and registered it as Special Civil Application. On September 15, 1999, the learned Single Judge observed that launching of criminal prosecution against the employees, will not only result into sheer wastage of Government's money but it will unnecessarily increase several pending cases in courts, which ultimately on trial might not result in conviction. In such matters, in the opinion of the learned Single Judge, it is advisable and more appropriate to take only disciplinary actions. The learned Single Judge, therefore, admitted the petition by issuing rule and by making it returnable on 27th September, 1999. Notice was also issued to the Government through the Chief Secretary, Government of Gujarat, Gandhinagar.

#. The learned Single Judge also passed interim order which reads as under;

"In the meanwhile the State of Gujarat, through the Chief Secretary, Government of Gujarat, Sachivalaya, Gandhinagar, is restrained from filing any criminal cases against the employees who are involved in using unfair means in the departmental examination held and conducted during the period 1991-95, by Sardar Patel Institute of Public Administration, Ahmedabad."

#. It is this order which is challenged in the present Letters Patent Appeal by the State Government. The appeal was admitted by the Division Bench on 24th September, 1999. Mr. S.N.Shelat, learned Additional Advocate General appeared and argued the matter on behalf

of the appellant - State.

#. Mr.Shelat, learned Additional Advocate General has drawn the attention of this Court to the provisions of Gujarat High Court Rules, 1993 (hereinafter referred to as "the Rules"), as also, two decisions, one of the of Hon'ble Supreme Court and the other of this Court.

#. So far as the Rules are concerned, Mr.Shelat submitted that it is settled law that the Hon'ble Chief Justice is the captain of the team and the Master of the Roster. Each and every judge of a High Court has to take up only those cases assigned to him as per roster and sitting arrangements made by the Chief Justice. It was stated in the Memorandum of Appeal that the learned Single Judge committed an error of law and of jurisdiction in entertaining a letter written by an ex-employee and in treating it as a petition and in granting interim relief. According to Mr.Shelat, as per sitting arrangements, the matters pertaining to Public Interest Litigation (PIL) for admission as well as for final hearing were assigned to the First Court headed by the Hon'ble the Chief Justice / Acting Chief Justice. The learned Single Judge hence, could not have entertained a letter, treated it as a writ petition and passed any order thereon.

#. Mr.Shelat also submitted that the point is no longer res integra and is covered by a decision of the Hon'ble Supreme Court in STATE OF RAJASTHAN VS. PRAKASH CHAND AND OTHERS 1998(2) GLR 1149 (SC) and of this Court in AJIT PADIWAL VS. STATE OF GUJARAT 1998(2) GLR 1182.

#. In our considered opinion, the submission of the learned Additional Advocate General is well founded and deserves to be accepted. Since the learned Single Judge could not have treated a letter as Special Civil Application, entertained a petition and could not have passed any order, the same deserves to be set aside.

##. It was also stated by Mr.Shelat that the author of the letter (Mr.R.V.Trivedi) is Ex.Dy. Director in Sardar Patel Institute of Public Administration (SPIPA), Ahmedabad and he himself is involved in several illegalities and irregularities. At the instance of such a person, no order could have been passed by the learned Single Judge inasmuch as the author of the letter cannot be said to have moved this Court as pro bono publico and extraordinary and discretionary powers under Article 226 of the Constitution ought not to have been exercised in favour of such person.

##. We see considerable force in this submission also. As the action of entertaining a petition itself was without authority of law, contrary to the decision of the Apex Court as well as of this Court and against the provisions of the High Court Rules, 1993, the sitting arrangement and allotment of work, it is liable to be set aside and accordingly the same is set aside.

##. For the foregoing reasons, the present Letters Patent Appeal deserves to be allowed and accordingly allowed with no order as to costs. Since the learned Single Judge had no jurisdiction to entertain the petition, the petition also is ordered to be dismissed. In the facts and circumstances of the case, however, there shall be no order as to costs.

[ C.K.Thakker, Actg.CJ.]

Date : 24-11-1999 [ D. P. Buch, J. ]

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